APPENDIX A

IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT OF ALABAMA

No. 12765

EX PARTE JOHN P. HAMRICK

The State of Alabama, by and through its District Attorney and Deputy District Attorney, Hon. Earl Morgan and Hon. Burgin Hawkins, pursuant to Sections 434 through 442 of Title 15 of the Code of Alabama as amended, files in this Court in this cause a petition in writing setting forth facts tending to show that John Hamrick, the defendant in this cause, is a criminal sexual psychopathic person and defendant, by and through his attorneys Hon. Wm. B. McCollough, Sr. and Wm. B. McCollough, Jr. files demurrer to said petition, and same being submitted and argued, said demurrer is hereby overruled and defendant excepts. Now, therefore, said petition being and it is hereby considered by the Court, the defendant, John Hamrick, is hereby committed to the county jail of Jefferson County, Alabama, and the jailor or warden of Jefferson County, Alabama, is commanded to receive him into custody and to detain him until he is legally discharged or otherwise discharged by order of this court.

Done this 7th day of November, 1966.

/s/ Gibson, Judge

APPENDIX B

Judgment of the Court HC 651

EX PARTE THE STATE OF ALABAMA	Habeas Corpus Proceedings
vs.	Hon. Wallace Gibson, Judge Presiding
JOHN P. HAMRICK	

This the 8th day of November, 1966, came Earl C. Morgan, District Attorney, by Deputy District Attorney Burgin Hawkins, who prosecutes for the State of Alabama, and also came the petitioner in his own proper person and by attorney, William B. McCollough, Jr., and this cause being presented to the Court on the petition for writ of habeas corpus, writ of habeas corpus and sheriff's return thereto. This matter, by agreement of all of the above persons, is submitted to the Court on the sole question of the legal validity and constitutionality of the proceedings provided for in Title 15, Sections 434 through 442 of the Code of Alabama of 1940, as amended, under which statutes the petitioner had been committed to the County Jail. The same being duly considered by the Court, the Court finds the contentions of petitioner are without merit. It is therefore ordered and adjudged by the Court that the relief is hereby denied, the writ is hereby dismissed and the petitioner remanded to the custody of the Sheriff of Jefferson County, Alabama, pending further orders of this Court or until otherwise discharged by Law.

The said petitioner herein gives Notice of Appeal to the Supreme Court of Alabama.

APPENDIX C

THE STATE OF ALABAMA—JUDICIAL DEPARTMENT
THE SUPREME COURT OF ALABAMA

OCTOBER TERM, 1966-67

John P. Hamrick

6 Div. 406 v.

State of Alabama

Appeal from Jefferson Circuit Court

MERRILL, JUSTICE.

This appeal is from a judgment denying and dismissing a petition for habeas corpus after a hearing.

On November 7, 1966, the District Attorney of Jefferson County filed a petition in the circuit court for the commitment and examination of appellant, seeking to have him declared a criminal sexual psychopathic person under the provisions of Act No. 981, Acts of Alabama 1951, p. 1655, as amended, and listed in the 1958 Recompilation as Tit. 15, Sections 434-442.

A demurrer to the petition was filed, argued and overruled, and still on the same day, November 7, a petition for habeas corpus was filed, heard and denied in this court.

On November 8, the trial court appointed two psychiatrists, admittedly "qualified" in appellant's brief, to make a personal examination of appellant and to file with the court a report in writing of the results of their examination together with their conclusions and recommendations within a reasonable time.

Later that day, petitioner presented a writ of habeas corpus seeking admission to bail or, in the alternative, to being discharged, which, after a hearing, was denied and dismissed. An appeal was taken immediately and the transcript was filed that afternoon in this court. On the morning of November 9, 1966, this court set appellant's bond at $5,000 and he was released that afternoon upon posting bail.

Prior to all the events listed supra, appellant had been arrested, and later indicted, on two separate charges of rape by two different women. Preliminary trials on both charges were held on April 13, 1966. At that time, only the woman alleged to have been raped testified in each case. Bond was set in each case and one case was tried on September 12, 1966, which resulted in a verdict of "not guilty." The other case was set for trial on November 7, 1966, but on that date the District Attorney filed the petition for the commitment and examination of appellant as a criminal sexual psychopathic person.

Appellant argues that the statute, listed in the 1958 Recompilation as Tit. 15, Sections 434-442, as amended, is unconstitutional on its face. He argues that a district attorney could invoke the operation of statute by merely filing a statement that he believes an accused is a criminal sexual psychopathic person. This does not comply with the requirements of Section 436, as amended, and we do not believe any judge in this state would order a commitment or examination on such a statement. But even if such an order were made, it could be reviewed. But such is not the case here.

The District Attorney attached to his petition a transcript of the testimony of the complaining witnesses in each of the preliminary hearings on the rape charges. This was *all* the evidence in those proceedings and *all* the evidence

before us. We will not delineate it here because it may be diffgrent whenever there is a hearing. But we do state that the only evidence before us is amply sufficient to support the charge that appellant is a criminal sexual psychopathic person, and was ample to justify the order of the circuit judge for the examination, and if believed, is ample to support an order of commitment to protect society and to protect appellant.

Assuming, for the sake of argument, that appellant was not guilty of rape because each of the prosecuting witnesses consented to the sexual intercourse, there is still enough evidence of indignities and acts of perversion by appellant to justify the charge that he is a criminal sexual psychopathic person.

Appellant argues that Section 437, as amended, does not say when the report of the psychiatrists should be filed with the court, but he admits that the circuit judge ordered this report to be filed within a reasonable time.

Appellant also argues that there are no "guidelines" for the hearing provided for in Section 438 and no requirement for counsel for the person accused. We note that this hearing has not yet been held because the proceedings have not reached that stage. The answer to his contentions is that this "hearing" is a judicial hearing surrounded by all the requirements of due process. And certainly appellant is not going to be afflicted with these supposed objections. He is ably represented, his hearing will be before a qualified judge and any action taken can be reviewed by an appellate court.

We concede that it is possible that some of the dire consequences foreseen by appellant in some other case, not his, might result; but any arbitrary, capricious abuse of due process may be corrected in an appellate court. It is possible that there can be an unconstitutional application of a statute

permitting the involuntary commitment or detention of a person, but this possibility does not render the statute unconstitutional.

Appellant cites the case of *Specht* v. *Patterson*, 35 L. W. 4340, decided by the Supreme Court of the United States on April 11, 1967, which struck down the Sex Offenders Act of Colorado. But that act allowed an accused to be sentenced without an adversary hearing.

Our statute is similar to the Minnesota statute, the constitutionality of which was upheld in *Minnesota* v. *Probate Court*, 309 U.S. 270, 60 S. Ct. 523, 84 L. Ed. 744. In *Specht* v. *Patterson*, supra, the Federal Supreme Court said: "The case is therefore quite unlike the Minnesota statute we considered in *Minnesota* v. *Probate Court*, 309 U.S. 270, where in a proceeding to have a person adjudged a 'psychopathic personality' there was a hearing where he was represented by counsel and could compel the production of witnesses on his behalf."

We are not willing to say that the statute is unconstitutional on its face. As already stated, no hearing has yet been had on the merits of the charge.

AFFIRMED.

Livingston, C. J., Simpson and Harwood, JJ., concur.

FILED JUNE 1, 1967. Supreme Court of Alabama, Louise L. Holt, Assistant Clerk.

APPENDIX D

THE SUPREME COURT OF ALABAMA—THURSDAY, JUNE, 22, 1967

THE COURT MET PURSUANT TO ADJOURNMENT

PRESENT: ALL THE JUSTICES

6th Div. 406

John P. Hamrick
v.
State of Alabama
} JEFFERSON CIRCUIT COURT

IT IS ORDERED that the application for rehearing filed on June 6, 1967, be and the same is hereby overruled.

APPENDIX E

ARTICLE 4.

Criminal Sexual Psychopathic Persons

Section 434. Definitions.—(a) Any person who is suffering from a mental disorder but is not mentally ill or feebleminded to an extent making him criminally irresponsible for his acts, such mental disorder being coupled with criminal propensities to the commission of sex offenses, is hereby declared to be a criminal sexual psychopathic person within the meaning of this article. (1961, p. 1461, appvd. Sept. 8, 1961.)

(b) A qualified psychiatrist within the meaning of this article is a reputable physician licensed to practice in the state of Alabama who has limited his professional practice exclusively to the diagnosis and treatment of mental and nervous disorders for a period of not less than three years. (1951, p. 1655, Section 1, appvd. Sept. 12, 1951.)

Section 435. Jurisdiction.—Jurisdiction of criminal sexual psychopathic persons charged with a criminal sex offense is vested in the circuit courts of the state, or special juvenile or juvenile and domestic relations courts wherein a person is charged with contributing to the delinquency of a minor, for the purpose of conducting hearings for commitment and detention of such persons as hereinafter provided. (1951, p. 1655, Section 2, appvd. Sept. 12, 1951.)

Section 436. Petition filed by prosecuting solicitor.—When any person is charged with or convicted of a criminal sex offense and there is reason to believe that such person is a criminal sexual psychopathic person, the solicitor prosecuting the case or the attorney general may in his sound

discretion file in such courts, as a part of the proceeding and before the imposition of sentence or punishment, a petition in writing setting forth the facts tending to show that such person is a criminal sexual psychopathic person. (1951, p. 1655, Section 3, appvd. Sept. 12, 1951; 1961, p. 1461, appvd. Sept. 8, 1961.)

Section 437. Psychiatric examination of alleged criminal sexual psychopathic person; liability for expenses.—Upon the filing of such petition the court shall issue a mittimus or commitment of such person to the county jail. The court shall then appoint two qualified psychiatrists who, within ten (10) days from the date of the issuance of the mittimus or commitment, shall make a personal examination of such alleged criminal sexual psychopathic person. Such psychiatrists shall file with the court a report in writing of the results of their examination together with their conclusions and recommendations. In the event that both of such psychiatrists in such report state their conclusions to the effect that such person is a criminal sexual psychopathic person, a hearing shall be held as hereinafter provided, otherwise such person shall be admitted to bail as in other criminal cases. The costs of removing such person and the costs of such examination must be defrayed by the state; and if such person is determined to be a criminal sexual psychopathic person, such costs, together with all other expenses may be recovered by the state from such person, or his estate, or any relative who would have been bound to provide for and maintain him. (1961, p. 1656, Section 4, appvd. Sept. 12, 1951; 1961, p. 1461, appvd. Sept. 8, 1961.)

Section 438. Hearing; commitment to state institution.—Upon a hearing held for that purpose the court shall ascertain whether or not such person is a criminal sexual psychopathic person. Upon such hearing it shall be competent to introduce evidence of the commission by such person of any number of crimes together with the record of the punish-

ment inflicted therefor. If such person is determined to be a criminal sexual psychopathic person, then the court shall commit such person to the director of the department of corrections and institutions for confinement in the Alabama state hospitals or other appropriate state institutions under the jurisdiction of the department of corrections and institutions until such person shall have fully and permanently recovered from such psychopathy. (1951, p. 1656, Section 5, appvd. Sept. 12, 1951.)

Section 439. Authority and responsibility of superintendent of state hospital.—If such person is sent to one of the appropriate Alabama state hospitals by the director of the department of corrections and institutions, then the superintendent thereof shall have complete authority over, custody of, and responsibility for such person. Such superintendent shall have the authority to transfer back to the director of the department of corrections and institutions any such person committed to him when in the judgment of such superintendent, such person cannot or will not benefit from treatment. (1951, p. 1656, Section 6, appvd. Sept. 12, 1951.)

Section 440. Discharge from custody.—Such criminal sexual psychopathic person shall be discharged from the custody of the director of the department of corrections and institutions or the superintendent of the Alabama state hospitals only after he shall have fully recovered from such psychopathy. At any time when he shall appear to have so recovered, a petition in writing setting forth the facts showing such recovery may be filed with the clerk of the court by which he was committed and such court shall proceed to determine whether or not he has fully recovered from such psychopathy. If, following such hearing, such person is found not to have fully recovered from such psychopathy, then the court shall order such person to be

returned to the custody of the director of the department of corrections and institutions or the superintendent of the Alabama state hospitals to be held under the previous commitment of such person. (1951, p. 1656, Section 7, appvd. Sept. 12, 1951.)

Section 441. Probation following discharge.—If, following such hearing, such person is found to have fully recovered from such psychopathy, then the court shall order that such person be discharged from custody and shall place him on probation for such reasonable time as the circumstances may justify. If such person violates the terms of his probation the court shall, in its discretion, either return him to the custody of the director of the department of corrections and institutions for further treatment under the previous commitment or cause him to serve his sentence for the crime for which he was convicted. (1951, p. 1657, Section 8, appvd. Sept. 12, 1951.)

Section 442. Expenses.—The state of Alabama shall defray all expenses of such persons, including the cost of the examination by two psychiatrists provided for in section 437, either while confined at the appropriate Alabama state hospital or other appropriate institution under the jurisdiction of the department of corrections and institutions. The county where the criminal offense is begun shall pay the expense of transferring such person to another county where necessary for the examination provided for under section 437 hereof. The cost of removing such a person to and from the Alabama state hospitals or other state institutions under any of the provisions of this article must be defrayed by the state as in case of removal of prisoners from one county to another. The reasonable expenses of such person in the hospital or other state institution may be recovered by the state from such person, or his estate, or any relative who would have been bound to provide for and maintain him elsewhere. (1951, p. 1657, Section 9, appvd. Sept. 12, 1951.)